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CERTIFICATE OF TRANSMISSION BY FACSIMILE (37 CFR 1.8)

Applicant(s): *Burnham et al.*

Docket No.

BUR920020109US1

Application No.

10/604,905

Filing Date

08/26/2003

Examiner

Thompson, Craig

Group Art Unit

2813

Invention: **METHOD FOR FABRICATING A NITRIDED SILICON-OXIDE GATE DIELECTRIC**

I hereby certify that this Restriction Election (3 pages)

(Identify type of correspondence)

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Docket No. BUR920020109US1

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Burnham *et al.*

Group Art Unit: 2813

Filed: 7/28/2004

Examiner: Thompson, Craig

Serial No.: 10/604,905

Title: **METHOD FOR FABRICATING A NITRIDED SILICON-OXIDE GATE DIELECTRIC**

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

RESTRICTION ELECTION

In response to the species restriction requirement dated March 9, 2005, Applicants hereby provisionally elect, with traverse, Species 1.

Applicants respectfully contend that the species restriction is improper and should be withdrawn, because a search and the examination of the entire application could be made without serious burden. See MPEP § 803, in which it is stated that "if the search and examination of the entire application can be made without serious burden, the Examiner must examine it on the merits" (emphasis added). Applicants respectfully submit that this policy should apply in the present application in order to avoid unnecessary delay and expense to Applicants and duplicative examination by the Patent Office.

10/604,905

In light of the preceding species election, claims 1-15 read on the elected species. Claim 1 is generic with respect to the elected species. For example, claim 1 is generic with respect to claims 2 and claim 16.

Moreover, Applicants respectfully contend that the species restriction is improper under MPEP 806.04(f), because claims 2 and 16 are not mutually exclusive. First, please note that claim 16 includes all of the limitations of claim 1. Second, please note that the claim 2 is not exclusive with respect to claim 16, as evidenced by the fact that claim 17 (which depends from claim 16) has the exact same limitation as claim 2. Therefore, the test for mutual exclusivity as stated in MPEP 806.04(f) is not satisfied. Accordingly, Applicants respectfully request that the species restriction be withdrawn.

10/604,905

CONCLUSION

Based on the preceding arguments, Applicants respectfully believe that all pending claims and the entire application meet the acceptance criteria for allowance and therefore request favorable action. If the Examiner believes that anything further would be helpful to place the application in better condition for allowance, Applicants invites the Examiner to contact Applicants' representative at the telephone number listed below. The Director is hereby authorized to charge and/or credit Deposit Account No. 09-0456.

Date: 03/24/2005

Jack P. Friedman
Jack P. Friedman
Registration No. 44,688

Schmeiser, Olsen & Watts
3 Lear Jet Lane, Suite 201
Latham, New York 12110
(518) 220-1850

10/604,905